

# NH HICKS

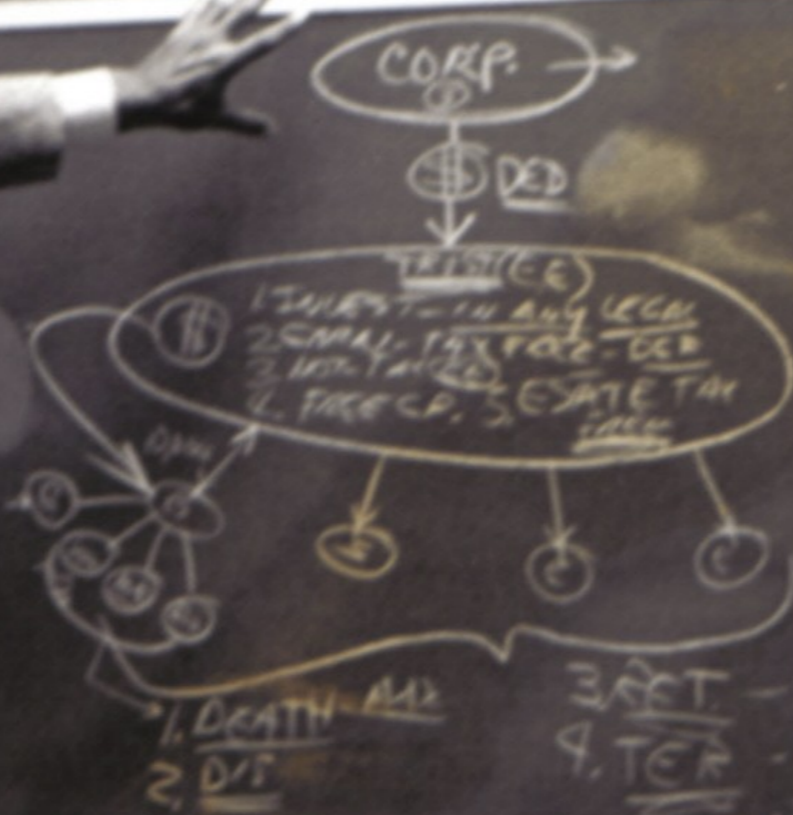
Legal and Pension Consultants

**Qualified Plans in Today's Environment**

**Fiduciary & Legal Review**

**2018**

Experience Counts



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# *Design Highlights*

- Litigation Updates Tibble
- Significance of Fiduciary Status
- 3(16) vs. 3(21) vs. 3(38) Fiduciary
- New Fiduciary Regulations
- ERISA Fee Disclosure
- Investing in Real Estate
- Determination of Controlled Group
- Red Flag Issues
- Compliance Assistance
- DOMA
- Missing Participants
- State sponsored Retirement Plans

# *Significance of Fiduciary Status*

The preamble to the proposed regulation explains:

“ERISA imposes a number of stringent duties on those who act as plan fiduciaries, including a duty of undivided loyalty, a duty to act for the exclusive purposes of providing plan benefits and defraying reasonable expenses of administering the plan, and a stringent duty of care grounded in the prudent man standard from trust law.”

# *Significance of Fiduciary Status*

“Congress supplemented these general duties by categorically barring, subject to exemption, certain ‘prohibited’ transactions. Fiduciaries are personally liable for losses sustained by a plan that result from a violation of these rules.”

So fiduciaries are subject to standard of care, and are barred from engaging in prohibited transactions.



# 3(16) vs. 3(21) vs. 3(38) Fiduciary

3(16)	3(21)	3(38)
<b>Named and acts as Plan Administrator</b>	<b>States in writing co-fiduciary status</b>	<b>States in writing co-fiduciary status</b>
<b>Oversees management &amp; administration</b>	<b>Assists in drafting IPS</b>	<b>Drafts IPS</b>
<b>Selection, evaluation &amp; monitoring all providers</b>	<b>Helps design initial fund menu</b>	<b>Builds initial fund menu</b>
<b>Evaluation of all plan fees</b>	<b>Provides monitoring</b>	<b>Monitors menu</b>
<b>Delegate administration responsibilities</b>	<b>Recommends changes</b>	<b>Makes changes</b>
<b>Oversee operation of Plan</b>	<b>Recommends mapping strategies</b>	<b>Determines mapping strategies</b>
<b>Provide reporting &amp; disclosure materials</b>	<b>Provides documentation</b>	<b>Provides documentation</b>

# *New Fiduciary Regulations*

## **DOL Fiduciary Rule**

- Released on April 6, 2016 by DOL
- Covering investment advice and conflicts of interest

## **Implementation Date**

- June 9, 2017
- January 1, 2018 with BIC Exemption

## **What constitutes Investment Advice**

- Recommendation
- Covered Investment Advice

## **Best Interest Contract Exemption**

# *ERISA Fee Disclosure*

## **408(b)(2) Regulations**

### ***Service Providers to Plan Sponsors***

- A description of the services provided
- The fees and compensation deducted from participant accounts
- Deadline was July 1, 2012

### **Plan Sponsors determine if fees and services are reasonable**

- Review
- Benchmark
- Document Findings



# *ERISA Fee Disclosure*

## **404(a)(5) Regulations**

### ***Plan Sponsors to Provide Participants***

- Information to select investments
- An explanation of fees deducted from their accounts
- Fees for future individual transactions
- Deadline was August 30, 2012

### **Investment Comparative Chart**

- Must be distributed annually
- 2013 deadline extended to February 25, 2014

# *Can a Plan Invest in Real Estate?*

- Prohibited Transactions
- Disqualified Person
- Unrelated Business Taxable Income (UBTI)
- Fiduciary Issues
- Valuation Problems
- Tax Issues
- Issues at Plan Termination

# *Compliance Assistance*

- DOL Delinquent Filer Program (DFVC)
- IRS Penalty Relief for Late 5500-EZ
- IRS Voluntary Correction Program (VCP)
- IRS Self Correction Program (SCP)
- DOL Voluntary Fiduciary Correction Program (VFCP)
- Determination of Controlled / Affiliated Services Groups
- Legal Opinions and Plan Audit Services

# *Defense of Marriage Act*

- June 26, 2013 case U.S. v. Windsor
- Federal Law recognizes marriages for pension purposes under ERISA
- Operational changed to be enacted by plan
- Identifying employees and providing updated information
- More clarification expected from IRS/DOL

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# *Need More Information*

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